

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRUCE HENRY THOMPSON,

Defendant-Appellee.

UNPUBLISHED

January 22, 1999

No. 200756

Kalamazoo Circuit Court

LC No. 96-001372 AR

AFTER REMAND

Before: Markey, P.J., and Bandstra and Markman, JJ.

MEMORANDUM.

In a previous order, we remanded this matter for factfinding regarding the events following defendant's arrest for operating a motor vehicle under the influence of intoxicating liquor. In an accompanying opinion, we identified a number of factual questions we considered important in determining whether defendant was afforded a "reasonable opportunity" to take an independent chemical test as required by statute. MCL 257.625a(6)(d); MSA 9.2325(1)(6)(d).

On remand, the district court made a number of factual findings related to this question. Defendant was informed about and understood his chemical test rights, including his right to arrange for an independent test. He did not, at any point, indicate to the officers at the sheriff's department that he wished to have an independent chemical test. Defendant was afforded the opportunity to use a telephone and called his wife to make necessary arrangements as a result of the arrest, including the contacting of an attorney. Defendant could have contacted an attorney directly by telephone or made other telephone calls as he wanted. As a result of defendant's contact with his wife, attorney David Butler telephoned the sheriff's department in an attempt to speak with defendant. Pursuant to usual departmental policy and not as an attempt to coerce defendant, Butler was not allowed to speak directly by telephone with defendant. Further, the department has no policy requiring that persons under arrest be informed when they receive phone calls, including from their attorneys.¹ Butler did not suggest to the person at the department receiving his call that he wanted to speak with defendant regarding an independent chemical test. Although Butler was not aware of it, he could have presented himself at the sheriff's department where he would have been allowed to speak directly and

confidentially with defendant. Having reviewed the transcripts of the evidentiary hearing on remand, we conclude that these facts are amply supported by the record.

Based on the forgoing, we conclude that defendant was not denied “a reasonable opportunity” to arrange for an independent chemical test as required by MCL 257.625a(6)(d); MSA 9.2325(1)(6)(d). With respect to the issues raised on appeal, the district court had determined, before the evidentiary hearing on remand, that defendant was not properly afforded his right to speak with counsel regarding an independent chemical test. The remand proceedings demonstrate that this conclusion is not supported by the evidence. Defendant could have contacted his attorney directly had he known Butler’s telephone number or, failing that, with additional calls after his wife secured that number. Alternatively, Butler could have spoken directly with defendant about the possibility of an independent chemical test by appearing at the department. The procedures and policies in effect at the sheriff’s department on the night of defendant’s arrest did nothing to preclude these possibilities. It was not necessary for the department to act as a messenger service and inform defendant that his attorney had called.

We conclude that the district court improperly determined that defendant’s statutory rights were denied. We reverse the order suppressing the results of defendant’s chemical tests. We remand this matter to the district court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Richard A. Bandstra

/s/ Stephen J. Markman

¹ Apparently, this occasionally occurs if, for example, a call is placed to an arrestee when the department is not busy.